

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

05-06-08 PM 12:03

CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO MADRID, et al.

Plaintiffs,

vs.

JIM TILTON, et al.

Defendants.

No.: C90-3094 T.E.H.

**SPECIAL MASTER'S FINAL REPORT
AND RECOMMENDATION TO CEASE
HEALTH SERVICES MONITORING AT
PELICAN BAY STATE PRISON**

I.**INTRODUCTION.**

The Special Master recommends herein that he cease further monitoring of medical and mental health services at Pelican Bay State Prison ("PBSP"). This recommendation follows thirteen years of remedial work. It is also based on the existence of two overarching and more inclusive state-wide class actions which better represent the long term interests of *Madrid* class members given the statewide nature of remaining problems. This recommendation is consistent with instructions by the Court to manage class based remedial programs in a coordinated manner. As explained below, the Special Master is able to make this recommendation because defendants have agreed to continue medical remedial efforts at PBSP through the *Plata* class action and to continue mental health remedial efforts through the *Coleman* class action.

II.**PROCEDURAL BACKGROUND.****A. The Pelican Bay State Prison Health Services Remedial Plan.**

The Court's *Madrid* Findings of Fact and Conclusions of Law were filed January 10, 1995. The Order of Reference appointing a Special Master issued January 23, 1995. Defendants required more than two years to develop an adequate health services remedial plan. The plan, consisting of multiple volumes of policies, procedures, and training materials was developed by defendants, counsel, and the Court appointed experts. It was approved and adopted by the Court on March 10, 1997 (*See*, Remedial Order Re Medical and Mental Health Care Services).

B. The Special Master's Monitoring of the Delivery of Health Care at PBSP.

Throughout the decade which followed the Special Master effectuated monitoring of the health care services provided to *Madrid* class members through a program of "30-day meetings" involving California Department of Corrections and Rehabilitation ("CDCR") personnel employed at PBSP (some meetings on-site, others through video conference), "60-day meetings with CDCR officials from the CDCR Headquarters, periodic on-site inspections of the prison with counsel, on-site inspections by the Court's medical and mental health experts, and the review of an extensive number of prisoner complaints, (CDCR "602" grievances, letters to

1 plaintiffs' counsel, and letters to the Court and/or the Special Master). Periodically, the Special
2 Master issued formal reports concerning the status of health care delivery at PBSP, and, on
3 occasion, recommended specific remedial plan enhancements, corrective actions, and additional
4 orders. *See*, for example "Order re Special Master's Report re Compliance with Health Services
5 Remedial Plan for Compliance Period September 2000 through May 2001," filed March 7, 2002.

6 C. Cessation of Health Services Monitoring at Pelican Bay State Prison.

7 Following the initial years of remedial plan work at PBSP, defendants approached the
8 Special Master and requested that selected components of the Madrid health services remedial
9 plans be "terminated." Some of those elements involved medical care, others mental health care.
10 After discussion, it was agreed that the underlying remedial orders should not be terminated in a
11 piecemeal fashion because the overall health care remedial plan contained numerous interrelated
12 elements. Instead, a plan was formulated that called for the Special Master to recommend to the
13 Court that he cease monitoring those components of the remedial plan where defendants had
14 demonstrated sustainable improvement in services, which resolved the underlying constitutional
15 deprivation. Each time the Special Master took steps to cease monitoring of selected
16 components of the PBSP health services remedial plan, he did so in a manner consistent with the
17 Order of Reference of January 23, 1995. First he issued an initial draft report, thereafter face to
18 face meetings were held, and following agreement by the parties, a final report was submitted to
19 the Court.

20 After more than five years of remedial work at PBSP, it became apparent to the Special
21 Master that several of the more intractable problems faced by the prison were system-wide in
22 nature. For example, problems such as the inability to hire and retain clinical staff reflected
23 inadequate salaries on a state-wide basis, and the inability to provide adequate treatment and
24 housing for inmates with serious mental health problems reflected a lack of intermediate and
25 acute mental health beds on a state wide basis, etc. Neither party seriously disagreed with the
26 Special Master's findings in this regard.

27 D. The Madrid Focused Elements of Health Services Monitoring.

28 Therefore, in a report filed December 13, 2002 the Special Master recommended that he

1 concentrate his health services monitoring on six major remaining problems. On January 9, 2003
 2 the Court issued an order approving the Special Master's focused monitoring program. As set
 3 forth by the Special Master, and approved by the Court, the primary remaining health services
 4 problems which needed to be corrected at PBSP included the following:

- 5 1. Problems with follow-up and patient management.
- 6 2. Physician Quality.
- 7 3. Psychiatric Services Unit ("PSU") Plan Compliance.
- 8 4. Physician, Psychiatric Technician, Medical Technical Assistant, and Recreational
 9 Therapist staffing.
- 10 5. CCCMS Quality.
- 11 6. Department of Mental Health ("DMH") services.

12 On August 15, 2003 the Court, based on recommendations by the Special Master, ordered
 13 the cessation of monitoring concerning CCCMS care and PSU care. Thus, for the past four years
 14 only four components of the health services program at PBSP have been subject to monitoring.

15 III.

16 FINDINGS.

17 1. The remaining components of the health services remedial plan subject to monitoring
 18 at PBSP (problems with follow-up and patient management; Physician quality, Physician,
 19 Psychiatric Technician, Medical Technical Assistant, and Recreational Therapist staffing, and
 20 DMH services) involve systemic problems that are actively being addressed on a statewide basis
 21 in *Coleman* and *Plata*.

22 2. Defendants agree to continued monitoring and necessary remedial action concerning
 23 each of the four remaining problems in the context of the *Coleman* and/or *Plata* class actions.
 24 Therefore, despite the cessation of health care monitoring in *Madrid*, remedial action will
 25 continue in the context of *Coleman* and *Plata*.

26 3. The needs of the plaintiff class are better served by allowing remedial action to go
 27 forward in the state wide class actions instead of the continuation of monitoring in *Madrid*.
 28 Specifically:

1 a. *Problems with follow-up and patient management.*

2 Problems with patient management at PBSP have been addressed by the implementation
3 of the Madrid Patient Management Information System. This system, while providing controls
4 and record keeping functions designed to exceed constitutional minima, has been plagued with
5 implementation problems (the result of poor management by the CDCR), and certain disruptive
6 operational problems (the result of inherent MPIMS design and system shortfalls). The original
7 vendor contract for system maintenance will expire in August of 2008. The only viable long
8 term replacement that will keep PBSP clinicians automated is to progressively merge the PBSP
9 operation into the Receiver's information technology system. For example, a plan has been
10 proposed to utilize PBSP as a pilot site for access to the clinical data repository. Designing and
11 implementing a new prison specific IT system would be both wasteful and foolish, to be
12 effective and efficient, given the dynamics of inter-prison inmate movement, the CDCR requires
13 a statewide system for all health disciplines. Thus, from the perspective of patient management,
14 there is every reason to merge PBSP into *Plata* as soon as possible.

15 b. *Physician Quality.*

16 Six major initiatives have been established by the Receiver in *Plata* to improve physician
17 quality, corrective actions difficult and inefficient to establish for only one prison: (a) improving
18 physician salaries; (b) establishing timely and effective state wide recruitment programs,
19 (including a special primary care provider program working with Hodes Consulting Group); (c)
20 developing the new Professional Practice Executive Committee (PPEC) program for more
21 effective peer review evaluations; (d) developing and implementing a new clinical state-wide
22 credentialing program; (e) developing and implementing a new clinically oriented internal affairs
23 process in cooperation with CDCR Internal Affairs, the Employment Advocacy Team, and
24 Office of the Inspector General; and (f) establishing a new series of quality initiatives, beginning
25 with the Asthma Initiative designed to improve clinical quality concerning those clinical
26 interactions which in the past have contributed to preventable prisoner deaths. It will be far more
27 effective to continue to address the issue of physician quality, a problem which has many
28 complicated and inter-related elements, in the context of the entire CDCR medical

1 delivery system than to, for example, establish special salaries or investigations or initiatives for
 2 only one prison out of thirty-three. From the perspective of the need to improve physician
 3 quality, there is every reason to merge PBSP into *Plata*.

4 *c. Physician, Psychiatric Technician, Medical Technical Assistant, and*
 5 *Recreational Therapist staffing.*

6 The Receiver in *Plata* has increased the salaries of almost all CDCR clinical personnel,
 7 leading to improved levels of State staffing in all clinical categories. At the same time, he has
 8 established program to improve the operation of the health care contract unit, including a recent
 9 Request for Proposals ("RFP") for a state wide network of contract primary care providers.
 10 Meanwhile, the Court in *Coleman* has also increased psychiatrist salaries, after which PBSP was
 11 able for the first time to fill all vacant psychiatrist vacancies. The Receiver has also eliminated
 12 the difficult to fill Medical Technical Assistant ("MTA") position and replaced all MTAs with
 13 Licensed Vocational Nurses. In addition, the court representatives in *Plata* and *Coleman* have
 14 recently reached agreement that on a statewide basis Psychiatric Technicians will be hired, fired,
 15 and supervised by Registered Nurses. As a result of that agreement, the Receiver has agreed to
 16 assume full responsibility for the recruitment and hiring of Psychiatric Technicians. Again, and
 17 without question, the long term sustainable resolution of the State's failure to hire and retain
 18 adequate numbers of clinical personnel will be best achieved by statewide programs developed
 19 in the context of *Coleman* and *Plata*. From a clinical recruitment and retention perspective, there
 20 is every reason to merge PBSP into *Plata* and *Coleman*.

21 *d. Department of Mental Health ("DMH") services.*

22 *Madrid* concerns about DMH services relate to an unmet need for acute and intermediate
 23 mental health beds. The failure, on a statewide basis, to provide adequate inpatient mental health
 24 beds has created both a serious problem with PBSP prisoner/patients "cycling" into and out of
 25 treatment facilities, and a shortage of Correctional Treatment Center ("CTC") licensed beds
 26 (because an excessive number of such beds are used to confine mental health inmates who
 27 undergo a mental health "crisis"). The only cost effective long term sustainable solution to this
 28 problem, a problem encountered at every California prison, is to implement a health facility

1 construction program that will provide adequate mental health treatment space for each mental
2 health acuity level. This program has begun in the context of the Receiver's 10,000 bed
3 construction proposal, the coordination of which was recently approved by the four District
4 Court Judges responsible for the medical, mental health, dental, and Americans with Disability
5 Act cases. A sustainable program for necessary mental health beds will only be achieved
6 through the statewide class action. Merging the remaining elements of the *Madrid* mental health
7 remedial plan into *Coleman* will serve to better coordinate that process.

8 4. The merger of the remaining elements of the *Madrid* medical care remedial program
9 into *Plata* will provide *Madrid* class members with the benefits of *Plata* pilot programs. The
10 Receiver in *Plata* is contemplating a number of pilot programs, for example a new prison health
11 care governance model, a new health care scheduling and tracking system, and smaller regional
12 operations. PBSP, an institution "ahead of the curve" concerning its medical delivery model,
13 will be a prime candidate for one or more of these pilots. Access to the benefits of the pilots will
14 have a positive impact on morale at the prison, and a positive impact on the health care delivered
15 to the plaintiff class.

16 5. The merger of the remaining elements of the *Madrid* health care remedial plan into
17 *Coleman* and *Plata* will help reduce the overall cost of monitoring, eliminate confusion and the
18 possibility of different remedial standards among the four class actions, it will help effectuate
19 class action coordination, and it will begin to bring the Pelican Bay health care operation within
20 the fold of new CDCR health care delivery models established by the *Plata* Receiver and the
21 Special Master in *Coleman*.

22 6. The cessation of *Madrid* health care monitoring will send a positive message to the
23 hundreds of Pelican Bay clinicians, correctional officers, and support staff who have worked
24 diligently for many years to bring many critical elements of what was once an almost non-
25 existent health care delivery system up to constitutional standards. In essence, the staff at PBSP
26 have done all they can do the address the findings set forth by the Court on January 10, 1995.
27 An order ceasing monitoring and merging the remaining elements of the case into *Coleman* and
28 *Plata* will signal the Pelican Bay staff that they have reason to be proud of their achievements.

1 What remains to be fixed at PBSP should be the responsibility of the statewide class actions,
2 which are addressing statewide problems.

3 **IV.**

4 **THE SPECIAL MASTER'S COMPLIANCE WITH THE ORDER OF REFERENCE**

5 **A. Introduction.**

6 The Special Master had hoped that this report would not be necessary. To that end, the
7 Special Master attempted to work with counsel for almost two years to obtain a stipulation
8 relative to the merger of the remaining elements of the *Madrid* health care remedial program.

9 The process began in June 2006, following the initial joint *Coleman/Plata* hearing, when
10 both parties expressed interest in coordinating the health care class actions, and when counsel for
11 defendants specifically referenced the need to coordinate between *Madrid* and *Coleman*.

12 Following that hearing, on June 14, 2006, the Special Master sent a letter to the parties asking
13 whether merger could be effectuated. (Exhibit 1). In response, the State defendants said yes,
14 plaintiffs said no. (Exhibit 2). Months later, plaintiffs indicated to the Special Master they had
15 reconsidered their position. Therefore, on April 30, 2007, after discussing this issue with the
16 Special Master in *Coleman*, the Special Master in *Madrid* sent a second letter inquiring about
17 merger. (Exhibit 3). This time both parties indicated that merger would in principle be efficient
18 (Exhibits 4 & 5).

19 To move this agreement from one of principle to one of action, the Special Master,
20 working with the Special Master in *Coleman*, calendared a meeting for July 18, 2007 to discuss
21 merger implementation. To ensure the meeting would be effective, invitations were extended to
22 counsel for both *Madrid* and *Coleman*, to the Health Care Manager at PBSP, to the Special
23 Masters in both cases, and the Court experts in *Coleman*. However, at the meeting,
24 Steve Fama, counsel for the plaintiffs in both *Madrid* and *Coleman*, reported that plaintiffs had
25 again reversed their decision and that the Prison Law Office now opposed merger.

26 Later in 2007, however, plaintiffs yet again reversed their position, indicating that they
27 would support merger. However, counsel for plaintiffs thereafter did not respond to numerous
28 inquiries to develop the stipulation and procedure necessary to effectuate the proposed mergers.

1 See, e.g. Exhibit 6.

2 B. Compliance With the Order of Reference Filed January 23, 1995.

3 The Special Master served the parties with a draft version of this report on March 14,
4 2008. Both plaintiffs and defendants submitted comments to the draft report on April 4, 2008;
5 plaintiffs' comments in the form of a letter (Exhibit 7), defendants in the form of a pleading
6 (Exhibit 8). Pursuant to the Order of Reference, the Special Master held a meeting concerning
7 the parties' comments and concerns on April 10, 2008.

8 Plaintiffs do not oppose the Special Master's recommendations. Plaintiffs did, however,
9 express concern about the continuation of their periodic discussions concerning individual PBSP
10 prisoner/patient issues. Provisions for these communications are provided for by the stipulations
11 in *Plata*; however, to ensure a smooth transition, the Special Master modified his draft
12 recommendations to require that the parties to meet and confer about this issue.

13 Defendants also do not oppose the Special Master's recommendations. Defendants do,
14 however, raise three issues which require further discussion.

15 1. Defendants request clarification that the medical and mental health elements of the
16 *Madrid* class action are over, and that medical and mental health monitoring by counsel and the
17 Special Master will no longer take place in the context of *Madrid*. The Special Master and
18 counsel for plaintiffs agreed that certain clarifications were appropriate. Therefore, the final
19 recommendations were modified to explain this issue more clearly.

20 2. Defendants also seek clarification concerning how "compliance based issues" may be
21 raised. Again, when this issue was discussed on April 10, 2008, there was no real dispute
22 between defendants, plaintiffs, and the Special Master. Therefore, the final recommendations
23 were modified to explain this issue more clearly.

24 3. Finally, defendants argued that the Special Master's use of force monitoring cease,
25 and that the Court-Established Account for *Madrid* be closed. The Special Master finds this
26 request, made in the context of a report and recommendations limited to medical and mental
27 health care, to be premature. In fact, as the parties are aware, the Special Master is working on a
28 report to the Court concerning use of force monitoring. That report, however, has been delayed

1 because the parties requested time to agree upon, and file with the Court, a stipulation approving
 2 a CDCR statewide Use of Force Policy and Procedure (based on the model established for PBSP
 3 in *Madrid*). As of the date of this final report, however, that stipulation has not been filed. As
 4 soon as the parties do so, the Special Master will complete his use of force report, and submit it
 5 to the parties for review and comments pursuant to the requirements of the Order of Reference.

6 7 V.

8 RECOMMENDATIONS

9 A. Introduction.

10 As stated above, the Special Master is not proposing, when recommending the cessation
 11 of *Madrid* monitoring, that the medical and mental health delivery systems at PBSP no longer be
 12 subject to formal evaluation by the Federal Courts. The State defendants, to their credit, have
 13 taken the position that despite the cessation of many important elements of the medical portion
 14 of *Madrid*, medical care services in this case should be merged into the *Plata* remedial process.
 15 The State defendants also agree that, despite the cessation of monitoring concerning many
 16 important elements of the *Madrid* mental health delivery system, PBSP should continue to be
 17 subject to monitoring by the *Coleman* Special Master and experts. In so doing, the State has
 18 demonstrated the good faith required for the completion of class action remedial activity. For
 19 example, instead of arguing that because elements of *Madrid* medical and mental health program
 20 have been corrected and should not be subject to monitoring by other Courts, defendants take the
 21 position that a single, system-wide remedial program will be far more effective, in the long run,
 22 than having a prison specific plan at PBSP, with thirty-two other institutions operating under
 23 different standards.

24 B. Recommendations.

25 Therefore, considering all of the above, the Special Master recommends as follows:

26 1. The Special Master in *Madrid* should cease all monitoring of the mental health
 27 delivery system at PBSP.

28 Pelican Bay is a prison subject to the jurisdiction of the *Coleman* Court. Given this,

1
2 monitoring through *Coleman* should proceed as usual. No further merger orders are necessary
3 concerning the mental health elements of the *Madrid* remedial plan.

4 2. Defendants should work with the Special Master and Court experts in *Coleman* to
5 address two issues:

6 A. Ensuring that PBSP develops and implements one set of policies and
7 procedures consistent with *Coleman* remedial plan requirements.

8 B. Determining the best course of action concerning two mental health “pilot
9 projects” operational at PBSP: (1) the administrative segregation mental health intervention pilot
10 project; and (2) the Chief of Mental Health management project (*See*, Order re Special Master’s
11 Report Concerning Reorganization of Pelican Bay State Prison Health Services Management
12 Structure filed April 19, 2006).

13 Given defendants’ competent and timely implementation of the pilots, and the
14 cooperation expressed by defendants during the merger process; and given the latitude of
15 discretion that may be required by the *Coleman* Special Master concerning these projects, the
16 Special Master in *Madrid* does not believe that additional *Madrid* orders are necessary at this
17 time.

18 3. The Special Master should cease monitoring the medical and mental health delivery
19 system at PBSP. Medical and mental health monitoring, and allegations of violations of Federal
20 Court orders at PBSP should be handled pursuant to the procedures established in the *Coleman*
21 and *Plata* class actions.

22 4. Contingent upon the filing referenced in paragraph 5 below, the medical and mental
23 health orders concerning the *Madrid* remedial plan should terminate.

24 5. Within ten calendar days, counsel for the parties in *Madrid* should meet and confer
25 with counsel in *Plata* and file with the Court a stipulated order which includes Pelican Bay State
26 Prison, and the prisoner class at Pelican Bay, in the *Plata* class action.

27 6. Defendants should immediately cease the production of all document disclosures
28 required by *Madrid* remedial orders relative to the monitoring of the *Madrid* medical and mental

1 health programs. Counsel for the parties should meet and confer and provide to the Special
2 Master in *Coleman* and to the Court and/or Receiver in *Plata* stipulations re PBSP health care
3 related document disclosures that are consistent with the remedial plan requirements of *Coleman*
4 and *Plata*. Likewise, counsel for the parties and health care officials at PBSP, should meet to
5 ensure that periodic discussion between the counsel and PBSP clinical staff relative to individual
6 prisoner/patient concerns continue pursuant to *Plata* requirements.

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9 Dated this 5th day of May, 2008

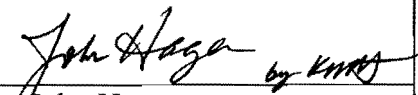
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14 John Hagar
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EXHIBIT 1

JOHN HAGAR - SPECIAL MASTER
Madrid v. Tilton et al., C-90-3094 T.E.H.

Federal District Courthouse
Law Library 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

June 14, 2006

STEVEN FAMA
Prison Law Office
General Delivery
San Quentin, CA 94964-0001

LISA TILLMAN
MICHAEL JORGENSEN
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Re: Madrid/Plata/Coleman

Dear Counsel:

At the joint *Plata/Coleman* hearing of last week, counsel for defendants requested coordination between *Madrid* and *Coleman*. Please meet and confer, and submit to the Special Masters for both *Madrid* and *Coleman*, no later than Friday, July 14, 2006, a *joint* (counsel for plaintiffs in both cases and counsel for defendants in both cases) list of the following:

- A. Conflicts of policy and practice which presently exist between *Madrid* and *Coleman*.
- B. Those issues which require coordination between *Madrid* and *Coleman*.

Concerning list A., provide copies of all correspondence prepared from January 2000 to the by either party that has been submitted to the Special Masters in *Madrid* and *Coleman* explaining or expressing concern about the conflicts.

Concerning list B., provide a joint statement explaining the manner by which the parties believe the coordination should be implemented.

I also request a *joint* statement from counsel responding to four questions:

- A. Should the medical portion of *Madrid* be placed under the *Plata* receivership at this time?

If not, why not?

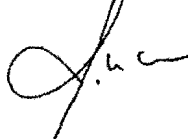
B. Should the mental health portion of *Madrid* be placed under the *Coleman* mastership at this time?

If not, why not?

Note: the questions above do not apply to the use of force portion of *Madrid*, nor do they apply to the *Freitag* remedial plan currently monitored by the *Madrid* Special Master.

If questions arise, do not hesitate to call.

Yours truly,

A handwritten signature in black ink, appearing to be 'J. Hagar', written over a horizontal line.

John Hagar

cc. The Honorable Thelton E. Henderson
Robert Sillen
Michael Keating
Bruce Slavin
Rochelle East
John Wolff
Madrid Unit
Dennis Beaty

EXHIBIT 2

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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July 13, 2006

Robert Sillen, Receiver
Office of the California Prison Receivership
1731 Technology Drive, Suite 700
San Jose, CA 95110

John Hagar, Special Master
Federal District Courthouse
Law Library 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

RE: *Madrid v. Tilton*, USDC Case No. C-90-3094 TEH
Plata v. Schwarzenegger, USDC Case No. C-01-1351 TEH
Coleman v. Schwarzenegger, USDC Case No. C-S-90-020 LKK
Perez v. Tilton, USDC Case No. C-05-05241 JSW

Dear Messrs. Sillen and Hagar:

The parties submit this joint response to Mr. Hagar's letter dated June 14, 2006 concerning *Madrid/Plata/Coleman* matters, and to Mr. Sillen's letter dated June 22, 2006 concerning *Perez/Plata* matters.

Mr. Hagar asked the parties whether the medical portion of *Madrid* should be placed under the *Plata* receivership, and whether the mental health portion of *Madrid* should be placed under the *Coleman* mastership. Defendants believe that the medical portion of *Madrid* should be placed under the *Plata* receivership and that the mental health portion of *Madrid* should be placed under the *Coleman* mastership. Defendants believe that this would facilitate consistent health care services across CDCR's institutions, and would facilitate budgeting and fiscal planning. Specifically, the remaining mental health and medical issues in *Madrid* overlap with the systemic statewide issues that are being addressed in *Coleman* and *Plata*.

However, Plaintiffs believe that the medical and mental health portions of *Madrid* should remain part of that case, and not be placed within the *Plata* and *Coleman* cases at this time. Plaintiffs' counsel, consistent with their duty to the class, believe that preserving the status quo best protects the rights of the class. Plaintiffs believe that the progress in *Madrid* is due at least in part to the specific attention that the case has received, and they want to avoid any possibility of backsliding and preserve the possibility of specific attention if further remedial actions are necessary in the future. Plaintiffs assert that Mr. Hagar's dual role as the special master in *Madrid* and the chief of staff for the Receiver will ensure coordination between the two cases.

Robert Sillen, Receiver
John Hagar, Special Master

July 13, 2006

In either event, both parties defer to the *Coleman* and *Madrid* Special Masters, and to the Receiver, about the best way to coordinate the cases. The parties jointly welcome the courts' decision to hold monthly meetings between the Special Masters and Receiver, and quarterly meetings with the judges. Both parties request they be afforded the opportunity to raise coordination issues at these meetings, in a manner that is convenient to the courts.

The parties also believe that *Madrid*, *Plata*, and *Coleman* should be coordinated with respect to the following issues, among others: Clinical space, clinical and ancillary support staffing and organization, information technology and records management, touring, custody and escort staff, equipment purchasing, pharmacy, and staff compensation and salaries. The issue of staff compensation and salaries also affects the Department of Mental Health and the Division of Juvenile Justice. Also, the information technology and pharmacy issues overlap to the extent that an outside pharmacy provider's computer system should be able to interface with CDCR's computer system.

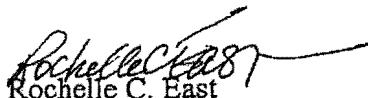
Mr. Sillen's June 22, 2006 letter asks the parties whether the *Perez* case should be placed under the *Plata* receivership. Both parties believe that it should not. The parties note that the *Perez* class has yet to be certified, and Judge White has not yet approved the proposed settlement. In fact, the class comment period is on-going and the fairness hearing is not scheduled until August 18, 2006. Assuming that the *Perez* class is certified and the settlement is approved, the parties believe that coordination of *Perez* and *Plata* will be appropriate in the areas identified above, but that placing *Perez* under the receivership would not.

Mr. Hagar's letter also asked for copies of all correspondence since 2000 documenting conflicting policies in the *Coleman* and *Madrid* cases. The parties have not had sufficient time to review their files, but will make those files available to the Special Master and the Receiver for that purpose. Further, the parties believe that consistent with Judge Henderson's initial directions in *Madrid*, remedial actions at Pelican Bay have been carefully tailored to coordinate with proceedings, including remedies, in *Coleman*. The Special Masters in the two cases regularly communicate and coordinate actions, and the two cases share a mental health expert. The parties are confident that coordination will continue via the monthly meetings envisioned by Judge Henderson and Judge Karlton.

The parties appreciate the opportunity to comment on these important matters.

Sincerely,

/s/
Don Specter
Prison Law Office
Attorneys for Plaintiffs


Rochelle C. East
Supervising Deputy Attorney General
Attorneys for Defendants

cc: The Honorable Thelton E. Henderson
The Honorable Lawrence K. Karlton
The Honorable Jeffrey S. White
Special Master J. Michael Keating

EXHIBIT 3

JOHN HAGAR - SPECIAL MASTER
Madrid v. Tilton et al., C-90-3094 T.E.H.

Federal District Courthouse
Law Library 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

April 30, 2007

BY E-MAIL AND BY REGULAR MAIL

STEVEN FAMA
Prison Law Office
General Delivery
San Quentin, CA 94964-0001

MICHAEL JORGENSON
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Re: Termination of *Madrid* Medical/Mental Health Components Subject to
Merger into *Plata* and *Coleman*.

Dear Counsel:

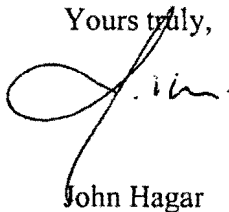
Last year I proposed that the medical elements of *Madrid* be merged into *Plata* and the mental health component be merged into *Coleman*. If I recall, defendants expressed interest, plaintiffs opposed this proposed merger.

Now that the Office of the Receiver has been established and formal monthly coordination meetings have begun between representatives of *Plata/Coleman/Perez*, I believe that it has become essential, in terms of remedial program management, the management of the cost of the remedial process, and in terms of consistency of the medical/mental health structure at Pelican Bay State Prison that we again revisit this issue. Both parties have much to gain by merging *Madrid* into *Coleman* and *Plata*.

I plan to file a motion with Judge Henderson, urging the Court to merge the medical elements of *Madrid* into *Plata* and the mental health component into *Coleman*; however before doing so I want to again provide counsel with the opportunity to meet and discuss this issue. In my opinion, the most effective way to move forward with merger will be through a stipulation approved by my office, the Receiver in *Plata*, and the Special Master in *Coleman*.

Please meet and confer and inform me in writing, no later than May 15, 2007, whether you are willing to merge the medical elements of *Madrid* into *Plata*, and the mental health component into *Coleman*.

Yours truly,

A handwritten signature in black ink, appearing to read "John Hagar", with a large, stylized loop at the beginning.

John Hagar

cc. Madrid Unit
Robert Horel
Maureen McLean
Robert Sillen
Michael Keating
Andrea Hoch
Bruce Slavin

EXHIBIT 4

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 11, 2007

John Hagar, Special Master
Judges' Reading Room
Court Library, 18th Floor
U.S. District Court, Northern District
450 Golden Gate Avenue
San Francisco, CA 94102

RE: Merger into *Plata* and *Coleman*;
Madrid v. Tilton, U.S.D.C., Northern Dist. of California, Case No. C-90-3094 TEH

Dear Mr. Hagar:

We respond to your April 30 letter proposing a merger of the medical portion of *Madrid* into *Plata*, and the mental health portion of *Madrid* into *Coleman*. The parties have met and conferred on this issue, and agree in principle that a merger would be efficient.

In the event of a merger, Defendants request that a termination order advise clinical staff which remedial plans and orders should be followed during which time frame. Defendants also request clarification of their duties during any transition, including whether various document productions (such as the *Madrid* use-of-force and health care document productions) would continue. Defendants further request a procedure to resolve any inconsistencies that may arise in the event of overlapping court orders. Finally, Defendants request clarification of the status of the non-medical and mental health portions of *Madrid*. Defendants believe that the only remaining issue under the June 17, 1997 Remedial Order would be monitoring of internal affairs investigations. As we have discussed at our 45-day meetings, Defendants believe the post-Powers investigation portion will terminate in January 2008. Similarly, the portion of *Madrid* referred from the *Freitag* decision should also conclude in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jorgenson".

MICHAEL JORGENSON
Supervising Deputy Attorney General
For EDMUND G. BROWN JR.
Attorney General

cc: Michael Keating
Ben Rice
Bruce Slavin
Don Specter

EXHIBIT 5



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E. Ivan Trujillo

May 15, 2007

John Hagar
Special Master – Madrid v. Tilton
via e-mail pdf file transfer only

Re: Your April 30, 2007 Letter

Dear Mr. Hagar:

Plaintiffs reply to your April 30th request that we confer with counsel for defendants in the *Madrid* case about merging the medical elements of *Madrid* into *Plata* and the mental health component into *Coleman*. Don Specter and I have conferred with opposing counsel. Plaintiffs are agreeable in principle to the concept of “merging” the cases as you outlined, particularly regarding the mental health aspects, but have questions about medical care and are not sure, what merger would mean operationally.

With regard to mental health issues – which would under your proposal be covered by the *Coleman* case – our concerns center on the status of the administrative segregation (ad seg) pilot program at Pelican Bay. This program at present is mandated by *Madrid* alone. While construction of treatment facilities in the ad seg unit apparently was completed in late March, I do not believe the adequacy of the actual treatment, or of the program now that the in-unit treatment facilities are completed, has been determined. Another question related to mental health is what would become of the of the *Madrid-Freitag* processes, in which this office as counsel for the *Madrid* plaintiff class has had the ability to attend and offer comments and concerns regarding the *Freitag* remedial plan and monitoring.

With regard to medical care matters, the questions are both specific and more general. A specific question focuses on the MPIMS project, and more specifically the continuing issues (as I understand them) regarding the inability to produce a medication administration record, and pharmacy interface. While these and other MPIMS related projects (including those related to the source code) could presumably be timely and addressed in *Plata*, there is no written commitment that I am aware of that this would happen, or detailed written report from you that would advise the Court and others regarding what needs to be done, and when.

Another question is what medical care policies and procedures Pelican Bay would be required to follow if that part of *Madrid* were placed under *Plata*. It is not clear to me whether there is, or would if the Receiver’s recently filed motion for modification is granted, a *Plata* court

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Mr. Hagar
May 15, 2007
Page 2

order that would mandate the prison to follow the CDCR health care services policies.

More generally, the issue of merger regarding medical care would be better addressed in the context of an assessment of the currently level of compliance at Pelican Bay with the court-ordered medical care policies. While I know that Court expert Nurse Cotton has inspected Pelican Bay and provided a report with the last approximately six months, Court expert Dr. Goldenson, who typically focuses on clinical adequacy issues, has not to our knowledge evaluated Pelican Bay in several years. Nor has Pelican Bay provided audits of its clinicians' patient care work. Plaintiffs believe that an evaluation of current compliance with the Court-ordered *Madrid* medical policies, including adequacy of clinical care, should underlie consideration of merger into *Plata* policy.

Assuming that merger is deemed appropriate, including after review of current expert reports, plaintiffs also believe that certain document productions from Pelican Bay should continue. Specifically, the Pelican Bay monthly key indicator report, and the monthly minutes of certain health care committees, should continue, to ensure that adequate care continues and that problems with providing care are recognized and timely addressed. Similarly, plaintiffs should continue to have the right to periodically inspect (including touring and reviewing unit health records) Pelican Bay with regard to health care compliance, and to bring individual health care matters to the attention of Pelican Bay staff (and discuss those matters with staff) in a manner similar to the *Madrid* case processes. These matters presumably could be addressed in any court order or stipulation regarding merger.

Sincerely,

/s/

Steven Fama

cc: Mike Jorgenson, Deputy Attorney General

EXHIBIT 6

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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October 16, 2007

Steve Fama
Prison Law Office
1 Main Street
San Quentin, CA 94964

RE: *Madrid, et al. v. Tilton, et al.*
U.S.D.C., Northern District of California, Case No. C 90-3094 TEH

Dear Mr. Fama:

After the 45-day status conference on October 15, we discussed the merger and termination of the medical care portion of this case into *Plata* and the mental health portion of this case into *Coleman*. The Special Master inquired about a merger by letter on April 30, 2007, and we have discussed the issue at least twice with the Special Master since then. Defense counsel in *Plata* have unsuccessfully tried to contact you several times to discuss a stipulated agreement, and you indicated you had contacted Mr. Lopes regarding *Coleman* concerns. It is time to end monitoring in *Madrid* and document specific Pelican Bay issues that Plaintiffs would like to raise through *Coleman* and *Plata*. To that end, we ask that you prepare a draft stipulated agreement for merger and termination that addresses your specific concerns. The Special Master's Final Report on the status of post-Powers monitoring indicated that the Special Master and the Court's experts are available to discuss a stipulation. **Defendants request that the Plaintiffs distribute a draft stipulation before the 45-day meeting on December 3, and request that the Special Master add the draft stipulation as an agenda item at that meeting.**

You raised the possibility that a merger and termination stipulation may need to be noticed and presented to the *Madrid* class for approval under Federal Rule of Civil Procedure 23(e). Defendants do not believe that such a stipulation would be a compromise of claims within the meaning of Rule 23, but Defendants will assist in the Rule 23 notice requirements should they be necessary. We believe that class notice may be unnecessary because the Court retained jurisdiction in this case until it found that constitutional violations were remedied. If the Court were to make such a finding as part of this stipulation, the class notice requirement in Rule 23 may be unnecessary. We remain available to discuss this and other issues that arise with you and the Special Master.

Steve Fama
October 16, 2007
Page 2

Please feel free to contact me at (415) 703-5629 to set up a meeting to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jorgenson".

MICHAEL W. JORGENSEN
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: John Hagar, Special Master
Don Currier, General Counsel Department of Corrections and Rehabilitation
Alberto Roldan, Department of Corrections and Rehabilitation
Madrid Unit, Pelican Bay State Prison
Charles Antonen, Deputy Attorney General
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EXHIBIT 7



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Zoe Schonfeld
E. Ivan Trujillo

April 4, 2008

John Hagar, Special Master
Madrid v. Tilton
via e-mail pdf transfer only

Re: Special Master's Draft Report re Cessation of Monitoring

Dear Mr. Hagar:

Plaintiffs have reviewed the above referenced Draft Report. Plaintiffs do not object to the Draft Report's recommendations, assuming that the Special Master has accurately anticipated that defendants will not object to the recommendations (see Draft Report at 3:22-25 and 9:21-23). Assuming that defendants do not object, plaintiffs will work with them with regard to suggesting which orders must be modified and stipulations regarding document disclosures, as recommended by the Draft Report. Plaintiffs also anticipate that defendants and the Receiver in *Plata* will work together to ensure that there will be no interruption in plaintiffs' counsel ability to present appropriate individual prisoner-patient medical care concerns to Pelican Bay medical staff, and to periodically discuss such concerns with appropriate medical staff at the prison. As the Special Master and defendants know, this has been the practice for many years under the *Madrid* case, and can (and generally does) take place for prisoner-patients at all other CDCR institutions pursuant to paragraph 7 of the Stipulation for Injunctive Relief in the *Plata* case. Plaintiffs' counsel's ability to raise and discuss appropriate individual medical concerns regarding Pelican Bay prisoner-patients should continue as and when medical care matters in *Madrid* are folded into *Plata*.

Sincerely,

/s/ Steven Fama

Steven Fama

cc: Mike Jorgenson / Emily Brinkman, Deputy Attorney Generals
Madrid Compliance Unit, Pelican Bay
Kristina Hector
(All via e-mail only)

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EXHIBIT 8

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9 Attorneys for Defendants Tilton, Horel, and McLean

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 **ALEJANDRO MADRID, et al.,**

15 Plaintiff,

16 v.

17 **JAMES TILTON, et al.,**

18 Defendants.
19

C 90-3094 TEH

**DEFENDANTS' COMMENTS
TO SPECIAL MASTER'S
DRAFT REPORT AND
RECOMMENDATION TO
CEASE HEALTH SERVICES
MONITORING AT PELICAN
BAY STATE PRISON**

20 Defendants submit the following comments to the Special Master's draft report and
21 recommendation to cease monitoring health services at Pelican Bay as required by the Order of
22 Reference. (January 23, 1995 Order.) The Defendants continue to support the Special Master's
23 recommendation for merging the medical and mental health care elements of the case into *Plata*
24 and *Coleman*.

25 With the exception of the areas identified in this report and recommendation for merging
26 medical and mental health monitoring, Court jurisdiction should end and the case should be
27 closed. The Defendants request that the draft report add language that Court's retention of
28 jurisdiction in its January 10, 1995 Order is ended and the Court is satisfied that the

1 Constitutional violations identified in the January 10, 1995 Order have been remedied. During
 2 the course of monitoring, the Court has found constitutionally adequate remedies have been
 3 implemented. Court monitoring ended through the entry of Court orders since monitoring was
 4 initiated after the Court's 1995 decision. For example, the Draft Report mentions six areas of
 5 health-care related monitoring that exist in *Madrid*. Monitoring ceased in two areas but those
 6 areas could have be reopened if there were class-based systemic constitutional violations. (Draft
 7 Report at 3; August 8, 2003 Order ¶ 4.) Similarly, monitoring use-of-force related issues ended
 8 by Court orders dated July 10, 2000 and July 10, 2002, but monitoring could have been re-
 9 opened if there was evidence of class-based systemic constitutional violations. (July 10, 2000
 10 Order at 6.) No class-based systemic constitutional violations have been identified since the
 11 2002 and 2003 orders. The Defendants request that the Court close the case and end jurisdiction
 12 for re-opening monitoring.

13 **1. Comment to Findings One, Two, Five, and Six of the Draft Report Regarding**
 14 **Merger Into Plata and Coleman.**

15 The Defendants request an additional recommendation that no *Madrid*-based compliance
 16 issue may be raised in *Coleman* or *Plata* unless there is a separate *Coleman* or *Plata*-based
 17 compliance issue. There are no other areas for continued *Madrid* jurisdiction beyond the four
 18 remaining components of the health services remedial plan that will be monitored in the context
 19 of the *Coleman/Plata* class actions. PSU plan compliance, and CCMS quality or any other
 20 closed compliance issues from prior *Madrid* court orders should not be raised through *Coleman*
 21 or *Plata* because of *Madrid* compliance issues unless there is a separate *Coleman* or *Plata*-based
 22 compliance issue.

23 **2. Recommendation that Compliance Monitoring of Investigations, Internal affairs,**
 24 **and Employee Discipline Cease.**

25 The Special Master's Final Report regarding the status of Post-Powers Remedial Plan
 26 monitoring stated that the Special Master may be in a position to present findings to the Court in
 27 January 2008 upon which to terminate the Post-Powers element of the *Madrid* remedial plan.
 28 (Oct. 12, 2007 Final Rpt. at 5-6). As stated in Defendants' comments to that Final Report, use-

1 of-force monitoring ended at Pelican Bay in 2000 and there is no ongoing constitutional violation
 2 presented by the Post-Powers remedial plan. (Defs.' Oct. 30, 2007 Comments to Draft Rpt. at 5.)
 3 Therefore the Defendants request that compliance monitoring of investigations, internal affairs,
 4 and employee discipline cease.

5 **3. Recommendation that Court-Established Account be Closed.**

6 The Defendants request that the Court close the Court-established account identified in the
 7 January 10, 1995 decision for paying the court-appointed Special Master and experts and the
 8 balance of funds returned to CDCR within three months of the Court entering an order on the
 9 merger and termination.

10 **CONCLUSION**

11 The Defendants agree with the Special Master's report and recommendation regarding the
 12 merger of the medical and mental health monitoring into *Plata* and *Coleman*. In light of the
 13 potential merger of the remaining issues, Defendants request that the Court order the case closed
 14 as stated in the January 10, 1995 Order because the Court is satisfied, with the exception of the
 15 issues identified in the Special Master's report, that Defendants have remedied the violations.
 16 Additionally, Defendants note that the Court would no longer have jurisdiction beyond the four
 17 remaining health service issues, and as such, Plaintiffs cannot raise a *Madrid*-based compliance
 18 issue in *Plata* and *Coleman*. Defendants further request that the Court cease monitoring
 19 investigations, internal affairs, and employee discipline. Finally, Defendants request that the

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1 Court close the Court-established account within three months of entering an order closing the
2 case.

3 Dated: April 4, 2008

4 Respectfully submitted,

5 EDMUND G. BROWN JR.

6 Attorney General of the State of California

7 DAVID S. CHANEY

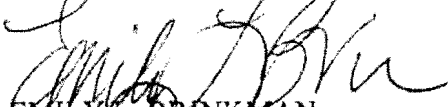
8 Chief Assistant Attorney General

9 FRANCES T. GRUNDER

10 Senior Assistant Attorney General

11 MICHAEL JORGENSEN

12 Supervising Deputy Attorney General

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14 EMILY L. BRINKMAN

15 Deputy Attorney General

16 Attorneys for Defendants Tilton, Horel, and
17 McLean

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Alejandro Madrid, et al. v. James Tilton, et al.**

Case No.: **C 90-3094 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 4, 2008, I served the attached

**DEFENDANTS' COMMENTS TO THE SPECIAL MASTER'S DRAFT REPORT AND
RECOMMENDATION TO CEASE HEALTH SERVICES MONITORING AT PELICAN
BAY STATE PRISON**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

John Hagar
Special Master
Judges' Reading Room
Court Library, 18th Floor
U.S. District Court, Northern District
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San Francisco, CA 94102

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 4, 2008**, at San Francisco, California.

Michael Xiang
Declarant


Signature

PROOF OF SERVICE BY MAIL

I, KRISTINA HECTOR, declare:

I am a resident of the County of Sacramento, California; that I am over the age of eighteen (18) years of age and not a party to the within titled cause of action; that I am employed in the County of Sacramento, California, as an Attorney at Law.

On May 5, 2008 I served a copy of the attached document described as SPECIAL MASTER'S FINAL REPORT AND RECOMENDATION TO CEASE HEALTH SERVICES MONITORING AT PELICAN BAY STATE PRISON on the parties of record in said cause by placing a true and correct copy thereof by PDF and by United States Mail and addressed as follows:

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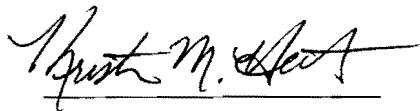
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Rosen, Bien & Galvan
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P.O.D.C., Inc.
5842 Crocus Circle
La Palma, CA 90623

1 BENJAMIN RICE
2 Legal Affairs Division
3 Office of the Governor
4 Capitol Building
5 Sacramento, CA 95814

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed on May 5, 2008 at Sacramento, California.

8 
9

10 Kristina Hector
11
12
13
14
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19
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21
22
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